Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1993

A. G. Edwards Jr., petitioner

v.

First American Title Insurance Company and John Hancock Mutual Life Insurance Company, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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June 26, 1994

35 pp

QUESTION PRESENTED

Should a recent unanticipated substantive injury move forward the accrual date of a much earlier relevant Statute of Limitations, when this second and consequential injury occurred years later but directly resulted from that acknowledged earlier malfeasant event which originally commenced this Statute of Limitations?

In event of a favorable determination on the above question, should this Court then direct the Court below to effectuate personal New Hampshire jurisdiction (as authorized under terms of the petitioner-invoked 18 U.S.C. ~ 1965(b)) over those individual defendants whom the Trial Court had previously dismissed despite an 18 U.S.C. ~~ 1961-68 claim having been included in the pleadings?

LIST OF PARTIES

The parties to the proceedings below were the petitioner A.G. Edwards Jr., together with the Respondents now before this Court who include First American Title Insurance Co., John Hancock Mutual Life Insurance Co., Harold Pearson III, William Gordon, John G. McElwee, Stephen Brown, Thomas L. McKiernan, Arthur Duncan, Prince A. Hawkins and the firm Hawkins, Rhodes & Sharp.

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The First Circuit's determinations in this Matter transgress the general concept that a Federal Court petitioner is entitled to equitable and substantial Justice and to a full hearing upon the Merits of his Cause of Action.

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APPENDIX A,B,C,D,E,F.

Appeals Court Order of October 7, 1993 A.

Appeals Court Order of January 19,1994 B.

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District Court Order of March 23, 1993 D.

District Court Order of July 8, 1993 E.

District Court Order of July 9, 1993 F.

TABLE OF AUTHORITIES

Cases:

Elliott v. Bronson, 872 F 2d 20 (C.A. 26, 1989) Page 22.

Haines v. Kerner, 404 U.S. 519, 520-21 Page 22.

Rowe v. John Deere, 130 N.H. 18, 21-23, 533 A.2d 375, 376-78 (1987. Pages 15,18.

Sorenson v. Pavlikowski, 94 Nev. 440, 443-44, 581 P.2d 851, 853-54 (1978) Pages15,18.

Statutes:

18 U.S.C. Sections 1961 - 1968 Pages 1,16,1719,20.

28 U.S.C. Section 1254 (1) Page 10.

28 U.S.C. Section 1291 Page 10.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

A. G. Edwards Jr.,
v.
First American Title Insurance Co., John Hancock Mutual Life Insurance Co., et al,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner A. G. Edwards Jr. respectfully prays that a Writ of Certiorari issue to review the March 29, 1994 Judgment of the United States Court of Appeals for the First Circuit. A determination in this Matter by this Supreme Court will then constitute a necessary exercise of this Supreme Court's powers of supervision regarding the crucial specific points in question as raised in this petition, and will then impose a much needed consistency as to how similar issues are determined throughout the Circuits.

OPINIONS BELOW

The Final Orders of United States Court of Appeals for the First Circuit, not found among reported citations, are reprinted in the Appendix hereto at Item C. No other Decisions, Opinions nor Interpretations have come from the First Circuit Court relating to this Matter, save the First Circuit's Denial of Respondent's Motion for Summary Affirmance dated October 7, 1993, Appendix Item A; and Order Denying appellant's Motion to be Allowed Oral Argument, Appendix Item B.

Orders and Judgments of the Trial Court include (i) a March 23, 1993 Order Dismissing all seven individual Defendants as well as the firm of Hawkins, Rhodes and Sharp and the John Hancock Mutual Life Insurance Company, and transferring to the District of

Nevada the Defendant First American Title Insurance Company, Appendix Item D; and (ii) and (iii) the Trial Court's July 8 and 9, 1993 Orders Granting Final Judgment as to the above described March 23,1993 Dismissals, Appendix Items E & F.

JURISDICTION

Invoking Federal jurisdiction under 28 U.S.C. Section 1332, the petitioner brought this action in the District of New Hampshire. On July 8, 1993, the New Hampshire Trial Court dismissed petitioner's Action as against all individual Defendants, against Hawkins, Rhodes & Sharp and against John Hancock Mutual Insurance Co., transferring Defendant First American to the District of Nevada--having taken only limited evidence and having held no hearing upon the Merits of petitioner's Causes of

Action or on any other point in question. Petitioner Moved for Reconsideration, Denied by New Hampshire District Court.

Petitioner was compelled to Appeal. The First Circuit, allowing no Oral Argument, on March 29, 1994 issued its Order and Judgment to affirm the District Court determination. The First Circuit Judgment specifically ruled that the relevant Statute of Limitations pertaining to the within Causes of Action had accrued on August 15, 1985, and that appellant's consequential further injury, deriving years later and although directly due to Respondents' original malfeasance, would not advance nor update the original 1985 Statute of Limitations accrual. This Appellate Court's determination therefore totally barred the petitioner from his substantial Cause of Action against

the dismissed individual parties.

Had the Court instead determined to advance accrual date of the original Statute of Limitations to occurrence of this consequential second injury occasioned petitioner by Respondents, those individual adverse parties permanently dismissed by the Appellate Judgment would properly remain under the timely Jurisdiction of the Trial Court then to answer for their documented and sequential transgression.

JURISDICTIONAL STATUTES

The Jurisdiction of this Supreme Court to review the Judgment of the First Circuit is invoked under 28 U.S.C. Section 1254(1). Submission of this Petition is timely when the established ninety-day period from the First Circuits' March 29, 1994 final Judgment extends through June 27, 1994.

STATUTES AND AUTHORITIES RELIED UPON

28 U.S.C. Section 1291:

"Final Decision of district courts. The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . "; and

28 U.S.C. Section 1254(1):

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party. . . ."

STATEMENT OF THE CASE

The petitioner is owner of Saval Ranching Company (hereafter, Saval), a Nevada agricultural property whose real estate loans in 1983 became delinquent to its lender, John Hancock Insurance Co. (hereafter, Hancock). This delinquency caused this lender to foreclose on August 15, 1985, acting through its Deed of Trust holder, First American Title

Company (hereafter, First American).

Hancock, First American and their Counsel, (Respondents P.A. Hawkins and Hawkins, Rhodes & Sharp (hereafter, Hawkins)) together mis-advertised the foreclosure sale of the specific Saval properties. Due to this Respondent error,all legally required advertisements published to notice the Saval sale specifically withheld conveyance of the mineral, oil and gas rights from the listing of pledged assets being foreclosed and sold--despite these oil, mineral and gas deposits comprising major asset component of Respondents' original loan security from Saval, pledged as well in Saval's Deed of Trust securing this Hancock loan.

Petitioner was extensively injured by this Respondent inattentive omission. United States Federal Court three years

later then totally voided Respondents' foreclosure because it had indeed been defectively noticed and improperly carried out by Respondents. The Federal Court's necessary Reversal of Respondents' mismanaged foreclosure and sale even further injured the petitioner.

Although the New Hampshire petitioner sought justice and redress in the Federal Courts System, District Court of New Hampshire dismissed all the individual Defendants, plus Hancock and Hawkins, before hearing any evidence upon the Merits, on the grounds that it lacked personal jurisdiction over the individual defendants including the firm of Hawkins. The New Hampshire Trial Court also refused to transfer these defendants to some other forum where the Court presumed personal jurisdiction over these dismissed parties to be more solid. The

Trial Court also dismissed Hancock, already before the District Court of Massachusetts.

When petitioner Appealed from this emasculating Trial Court Dismissal and the simultaneous transfer of First American to the faraway District of Nevada, the First Circuit affirmed the District Court's original Judgment and determinations. The Appellate Court ruled that transfer of the dismissed parties to a District of more solid personal jurisdiction would have been inappropriate because, as the Court of Appeals determined the within question, the applicable Statute of Limitations had already expired before these individual defendants had been served with a Summons and Complaint.

However, Edwards had sought to demonstrate that his mid-1990 loss of

his U.S. Forest Service Grazing Resource, directly deriving from Respondents' defective 1985 foreclosure, should thus move the herein 1985 Statute of Limitations accrual date forward to mid-1990. This advance of the accrual date would then render all named defendants still answerable under relevant Statutes of Limitations for both negligence and contract claims, and under the invoked 18 U.S.C. ~~ 1961 - 1968 as well.

The petitioner had asked the Court to recognize that his mid-1990 loss of his consequential U.S. Forest Service Grazing resource derived directly from the underinclusive and mishandled 1985 foreclosure carried out by the Respondent group.This mid-1990 injury constituted such major and unanticipated injury as to justify a move forward of the Statute of

Limitations accrual also to mid-1990. The Appeals Court disagreed and ruled at mid page 10. of its Opinion, "The fact that a plaintiff subsequently suffers some additional harm that may be traced to the same likely cause does not delay accrual of the cause of action."

The Court premised this position upon two State Court proceedings never yet adjudicated before any Federal Bench, Rowe v. John Deere, 130 N.H.18, 21-23, 533 A. 2d 375,376-78 (1987), and Sorenson v. Pavlikowski, 94 Nev. 440, 443-44, 581 P. 2d 851, 853-54 (1978), both of which State Court cases appear significantly off point when compared with the within questions presented by petitioner on Page 1. of the within application for Writ. Hence, the petitioner respectfully asks this Supreme Court to determine that neither of the Appellate Court's Case Law

Authorities cited in the First Circuit Judgment should apply to the within proceeding, neither Rowe v. John Deere nor Sorensen v. Pavlikowski.This would then withdraw the crucial basis for the Appeals Court to have affirmed the Trial Court Judgment, and the proceeding could be remanded for Trial, as Justice would entitle.

Had the Appellate Court originally found that appellant's major mid-1990 loss of his Forest Service Grazing Resource did indeed move forward the accrual of the original 1985 Statute of Limitations, then appellants' claims against all named Defendants for both negligence and contract would remain eminently timely at this present date.

In addition, had the Appellate Court then followed 18 U.S.C. ~ 1965(b), which basis for claim had been cited by

petitioner in this case, personal jurisdiction over any named but non-New Hampshire defendant would have been rendered solid:

> "(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court the court may cause such parties to be summoned. . ." 18 U.S.C. Section 1965(b) (in part).

REASONS FOR GRANTING THE WRIT

In essence, petitioner prays this Supreme Court to determine that a directly deriving consequential injury which could not be foreseen and which occurs multiple years following accrual of the original Statute of Limitations does indeed move accrual of that Statute of Limitations forward to time of the more recent substantial injury, when this subsequent injury derives directly from

the original malfeasant event which initiated the original Statute of Limitations.

Petitioner petitions this Supreme Court to determine that the two above State Court decisions cited as determinant case law by the Appellate Court, Rowe v. Deere and Sorenson v. Pavlikowski, supra, cannot control an Appeals Court determination when neither State Court Action has ever been heard on Federal Appeal or even adjudicated in a Federal Forum--and where no other governing case law from higher tribunals exists to guide or to control the questions raised in petitioner's Appeal.

Petitioner thus respectfully submits that the Judgment of the Court of Appeals and the Trial Court in this Matter should be reversed.

Under instructions within 18 U.S.C.

~ 1965(b), invoked by the petitioner in his Cause of Action, personal New Hampshire jurisdiction over each named Defendant would then be readily assertable.

Circumstances set forth in the preceding paragraphs appear to call for an exercise of this Supreme Court's power of supervision, particularly to clarify a major potential injustice presently prevailing within the Civil Justice System and relating especially to the within Action, disadvantaging this petitioner. This currently prevailing inequity in the Federal Court System causes a party to be deprived of all access to Justice when a subsequent consequential injury derives from a significantly earlier malfeasance where Statutes of Limitations, as herein. In this instance, prior expiration of an

earlier Statute of Limitations can then deprive a party from appropriate hearing and redress pertaining to the subsequent consequential injury occasioned him by earlier acts of the original malfeasants.

Petitioner respectfully then further prays that this Supreme Court reverse the Court below and Rule that provisions of 18 U.S.C. ~ 1965 (b) should then be applied to achieve valid New Hampshire personal jurisdiction over each named individual defendant herein and over the firm of Defendant Hawkins, Rhodes & Sharp.

Petitioner particularly cites the incomplete basis for Trial Court and Appeals Court determinations herein when both fora reached their decisions and issued their Judgments absent any hearing or oral argument.

Petitioner was left only the

alternative to bring his request for Writ of Certiorari when there clearly exists within the Federal Court System a disharmony and potential for substantial injustice, where unforseen subsequent and consequential injuries are denied redress because a relevant and originating Statute of Limitations period has expired. There exists compelling need for guidance and direction in this Matter by this Supreme Court, and for the establishment of a constancy which any movant is entitled to enjoy in deriving the efficient, expedient and cost-effective Substantial Justice which Federal Rules and related authority seek to guarantee.

The pro se movant feels regret and embarrassment at his needs to invoke applicable Case Law prescribing that an unrepresented party be held to less rigid

standards than those required of counseled parties.

However, directives in Haines v. Kerner, in Elliott v. Bronson and in many other references specify that a party without counsel shall have his unskilled appearance treated with more generous tolerance. The petitioner respectfully and hesitatingly invokes this guideline, which the First Circuit chose not to follow. [Elliott v. Bronson, 872 F. 2d 20 (C.A. 2d, 1989) and Haines v. Kerner, 404 U.S. 519,520-21.]

Any Court of Appeals, including the First, sends an unfortunate message abroad when it employs improvident and exclusionary bases to deny any party's access to the Substantial Justice envisioned by Federal guidelines.
It thus appears incumbent that the Supreme Court establish precise rulings

as to how these matters are to be decided throughout the Circuits.

SUMMARY AND CONCLUSION

For the above reasons, this Petition for Certiorari should be granted.

Petitioner expresses sincere appreciation to this Supreme Court for its consideration of his entreaty.

Respectfully submitted

by petitioner:

_____

A. G. Edwards Jr.

June 26, 1994

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APPENDIX

Appendix **A**

APPEALS COURT ORDER OF OCTOBER 7, 1993:

United States Court of Appeals for the First Circuit

No. 93-1873

A. G. Edwards Jr., plaintiff, appellant

v.

First American Title Insurance Co., et al, Defendant, Appellees.

ORDER OF COURT

Entered October 7, 1993

The motion for summary affirmance by appellees First American Title Company, John Hancock Mutual Life Insurance Company, Harold Pearson III, William Gordon, John G. McElwee, Stephen Brown, Thomas L. McKiernan and Arthur Duncan is denied but appellees may treat their memorandum in support of their motion as

appellees' brief. The appeal will be decided in due course.

By the Court:

Francis P. Scigliano
Clerk

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APPENDIX B

APPEALS COURT ORDER OF JANUARY 19, 1994:

United States Court of Appeals for the First Circuit

No. 93-1873

A. G. Edwards Jr., plaintiff, appellant,

v.

First American Title Insurance Co., et al, Defendants, Appellees.

Before

Breyer, Chief Judge,

Selya and Cyr, Circuit Judges

ORDER OF COURT

Entered January 19, 1994

Appellant's letter motion for oral argument of this appeal is denied.

By the Court:

Francis P. Scigliano, Clerk

By: Daniel F. Loughry,

Chief Deputy Clerk

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APPENDIX C

APPEALS COURT ORDER OF MARCH 29, 1994:

United States Court of Appeals for the First Circuit

No. 93-1873

A. G. Edwards Jr., plaintiff, appellant

v.

First American Title Insurance Company, et al, Defendants, Appellees.

JUDGMENT

Entered March 29, 1994

This Cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of New Hampshire.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano

Clerk

Relevant excerpt from this Judgment:

In his reply brief, Edwards has belatedly challenged this accrual date. However, his only challenge, whether as a matter of Massachusetts, New Hampshire or Nevada law, is his contention that his causes of action did not accrue until

mid-1990, when the U. S. Forest Service allegedly canceled his grazing permit for livestock on his Saval Ranches. He alleges that this cancellation "[d]irectly deriv[ed]" from the defective foreclosure sale and caused him substantial economic harm.

This argument has no merit because there has been, and can be, no dispute that Edwards was on notice of possible substantial injury as of the August 1985 foreclosure sale, when the underinclusive property description may have caused the Saval Ranches to be sold for a lower price. A cause of action accrues when a plaintiff has "knowledge, actual or attributed, of both harm to it and the likely cause of such harm. . . sufficient to stimulate further inquiry which was likely to alert it to a cause of action against a defendant." Hanson Housing

Authority v Dryvit System, inc., 29 Mass. App. Ct. 440, 446, 560 N.E. 1290, 1294 (1990), rev. den., 409 Mass. 1101, 565 N.E.2d 792 (1991). The fact that a plaintiff subsequently suffers some additional harm that may be traced to the same likely cause does not delay accrual of the cause of action. Id. ("It is not required that the extent of the injury be known before accrual of a cause of action"); Rowe v. John Deere, 130 N.H. 18, 21-23, 533 A.2d 375, 376-78 (1987). See Sorenson v. Pavlikowski, 94 Nev. 440, 443-44, 581 P.2d 871, 853-54 (1978).

Accordingly, with an accrual date of no later than August 15, 1985, the latest Edwards could have brought any of his claims against any of the defendants was August 15, 1991. Edwards' amended complaint naming these eight defendants was not filed until June 2, 1992."

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APPENDIX D

District Court Order of March 23, 1993:

United States District Court for the

District of New Hampshire

A. G. Edwards Jr.

v.

First American Title Co., et al.

Civ. No. 91-346-JD

Summary

The Court enters the following orders.

On Motion to Dismiss of Defendants Harold Pearson III, William Gordon, John G. McElwee, Stephen Brown, Thomas L. McKiernan and Arthur Duncan (document no. 17): Motion granted to the extent that the case is dismissed against these defendants.

On Prince A. Hawkins' Motion to Dismiss or Transfer (document no. 15): Motion granted to the extent that the

case is dismissed against Hawkins and Hawkins, Rhodes & Sharp.

On Motion to Dismiss or Transfer Venue of Defendant John Hancock Mutual Life Insurance Company (document no. 16): Motion granted to the extent that the case is dismissed against John Hancock.

On First American Title Insurance Company's Motion in the alternative to Dismiss or Transfer for lack of Proper Venue (document no. 9): Motion granted to the extent that the case against First American is transferred to the United States District Court for the District of Nevada.

SO ORDERED.

s/Joseph A. DeClerico Jr.
Joseph A. DeClerico Jr.
Acting Chief Judge

March 23, 1993

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APPENDIX E

District Court Order of July 8, 1993:

Summary

The Court grants the Defendants Prince Hawkins and Hawkins, Rhodes & Sharpe's Motion for Entry of Final Judgment Pursuant to F.R.Civ.P. 54(b) (document no. 35). The Court grants the Motion for Entry of Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b) (document no. 37).

SO ORDERED:

s/Joseph A. DeClerico Jr.
Joseph A. DeClerico Jr.
Chief Judge

July 8, 1993

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APPENDIX F

District Court Order of July 9 1993:

United States District Court for the

District of New Hampshire

Edwards

v.

First American Title, et al,

JUDGMENT

Judgment is entered only as to Defendants John Hancock Mutual Life Insurance Company, Harold Pearson III, William Gordon, John G. McElwee, Stephen Brown, Thomas L. McKiernan, Arthur Duncan, Prince Hawkins and Hawkins, Rhodes & Sharp pursuant to the Order dated July 8, 1993, by Chief Judge Joseph A. DeClerico Jr. (signed by Clerk James R. Starr)

By the Court

s/James R. Starr, Clerk

Date: July 9, 1993

Civil Action No. 1:91-cv-00346-JD